

MARKUP

1066.0.0 PERFORMANCE-BASED CONTRACTING POLICY [\(Ark. Code Ann. § 19-11-1010\)](#)

1066.1.0 Purpose

To insure that the quality of contract services is evaluated and, where necessary, proper remedies are implemented to assure efficient, effective, and responsive performance.

~~1066.2.0 Authority~~

~~Ark. Code Ann. § 19-4-1716~~

1066.2.0 Applicability

These rules apply to ~~every contract and contract extension or renewal~~ [all professional and consultant service \(PCS\) contracts](#) to which [The](#) Department of Human Services (DHS) is a party except [as listed below](#):

~~1066.3.1 Contracts with the United States government or an agency thereof.~~

~~1066.3.2 Cooperation agreements entered pursuant to the Interlocal Cooperation Act, Ark. Code Ann. § 25-20-101 et seq.~~

~~1066.3.3 Contracts mandated by an order or judgment of a state or federal court if application of these rules would result in violation of the terms of the court's order or judgment. For example, a juvenile judge may order DHS to arrange for a juvenile to receive immediate psychological treatment thereby preventing compliance with this policy before treatment begins~~

~~1066.3.4 Contracts solely to rent, lease, or purchase goods or equipment~~

~~1066.3.5 Contracts for \$10,000.00 or less~~

~~1066.3.6 Contracts for rent or lease of buildings or real property~~

~~1066.3.7 Contracts for architectural or engineering services~~

~~1066.3.8 Purchase orders~~

~~1066.3.9 Grants~~

~~1066.3.10A. Although the scope of these rules may not extend to all contracts, every Division is encouraged to utilize performance evaluations for their contracts. Sole source by law contracts in which the state is compelled as a result of court, state or federal mandate to award for services from a specific provider.~~

~~B. PCS contracts that are executed as Emergency contracts.~~

C. PCS contracts for Architectural and Engineering services that are awarded using Arkansas Building Authority (ABA) criteria.

D. PCS contracts for \$10,000.00 or less (compensation and reimbursable).

NOTE: DHS strongly encourages the use of performance indicators for ALL PCS contracts regardless of the dollar value or procurement method unless the DHS division/office director determines performance evaluation would not be cost effective.

1066.3.0 Definitions

1066.3.1. Performance Based Standards – Benchmark objective(s), performance indicator(s), acceptable performance criteria, method(s) of evaluation of performance, and remedies.

~~1066.4.1~~Goal – Benchmark Objective – A statement of intention with which actual achievement and results can be

measured and compared. The ~~goal~~benchmark objective should clearly describe what is to be achieved;

~~1066.4.1~~1066.3.2. ~~when achieved, when~~ it is to be achieved, and the extent of the achievement.

~~1066.4.2~~

Performance Indicator – An identification of the specific activity(ies) required of

~~1066.3.3.~~ ~~the of the~~ contractor to meet the ~~goal(s).~~ ~~Each goal~~benchmark objective(s). Each benchmark must have at least one performance indicator.

~~1066.4.3~~1066.3.4. Acceptable Performance – A statement defining the performance criteria for meeting or exceeding the performance indicator.

~~1066.3.5.~~ Performance Evaluation – A method to assess the quality of the contractor's service(s) by reference to all the performance indicators.

~~1066.4.5~~1066.3.6. Remedy – A statement of the correction or redress to be taken for unacceptable performance. Remedies ~~shall~~may include, but are not limited to, one or more of the following:

~~1066.4.5.1A.~~ Requirement that the contractor submit an acceptable corrective action plan and that payment be delayed pending satisfactory implementation of the plan.

~~1066.4.5.2B.~~ Reduction in payment by an amount set by reference to a predetermined mathematical formula.

~~1066.4.5.3C.~~ Withholding of payment to contractor.

~~1066.4.6~~1066.3.7. Administrative Appeal - ~~The~~This process set out in Arkansas Administrative Procedures Act, Ark. Code Ann. § 25-15-101, et seq.

~~1066.5.1~~1066.4.0 Procedures ~~To~~Design And Develop Performance Indicators

~~1066.5.1~~

1066.4.1 These procedures ~~are in addition to procedures set out in other rules or implemented by the Office of Administrative Services (OAS) and~~ apply to each new contract, or any contractual amendment ~~or renewal~~ which changes any contract provision except price, quantity, or duration.

1066.4.2 The Division desirous of contracting should prepare proposed performance based standards and submit them to Office of Chief Counsel (OCC) for review and approval.

1066.4.3 OCC will review the proposed performance based standards to assure that the standards will not violate any law or regulation applicable to DHS and that the contract terms will be enforceable. OCC will indicate approval in writing.

~~1066.5.4~~1066.4.4 Performance based standards must specify the ~~goal(s), benchmark objective(s),~~ performance indicator(s), acceptable performance levels, and remedies for unacceptable performance.

1066.4.5 There is no need for legal review by OCC if the contracting division certifies the following:

<div><div><div></div><div>This contract is identical to an existing contract <u>which has received OCC approval</u> except as to contractor, <u>AND</u> <div></div><u>AND</u> The existing approved performance terms are satisfactory and have accomplished the outcomes desired <div></div><u>OR</u> <div></div>The amendment or renewal changes only quantity, price, or duration <u>duration</u> <u>AND</u> <div></div><u>AND</u> The existing approved performance terms have previously been approved by OCC, are satisfactory, and have accomplished the outcomes desired.</div></div></div>

1066.4.6 Performance based standards must be re-approved by OCC at least every seven (7) years.

1066.5.0 Performance Evaluation

1066.5.1 During the term of the contract, the division/office shall complete sufficient performance evaluation(s) to determine if the contractor's performance is satisfactory or unsatisfactory. Justification for the division/office's ultimate determination should be retained in the division/office files for a minimum of five years.

1066.5.2 As part of the end-of-year closeout procedures, the division/office shall:

- A. Review the performance of ALL contracts having performance indicators
- B. Notify the contractor(s) of the results of the performance evaluation and impose remedies for inadequate performance

~~1066.6.2.3 Report to Office of Administrative Services (OAS), Contract Support Section (CSS), any that have performed at an Unsatisfactory level along with a short synopsis of the problem and the ultimate remedy that was applied~~

~~1066.6.2.4 Report to OAS/CSS that the performance of all remaining contracts was considered Satisfactory.~~

~~1066.6.2.5 Per Act 1255 of 1993, DHS must provide a summary report to the legislative Joint Committee on Public Health, Welfare, and Labor listing the overall assessment of performance of each contract at the end of each state fiscal year.~~

~~1066.7.0 The Rules Do Not Amend Or Replace Any Other Contracting Requirements Including, But Not Limited To, Submission Of The Internal Revenue Service Questionnaire To Determine The Existence Of The Employer-Employee Relationship.~~

~~The rules do not amend or replace any other contracting requirements including, but not limited to, submission of the Independent Contractor Checklist to determine the existence of an employer-employee relationship.~~

1066.6.0 Originating Section/Department Contact

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